

# Exhibit A

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 SECURITIES AND EXCHANGE  
4 COMMISSION,

Plaintiff,

5 v.

20 CV 10832 (AT)(SN)

Remote Conference

6 RIPPLE LABS INC., et al.,

7 Defendants.

8 -----x

9 New York, N.Y.

August 31, 2021

10 12:16 p.m.

11 Before:

12 HON. SARAH NETBURN,

13 Magistrate Judge

14 APPEARANCES

15 SECURITIES AND EXCHANGE COMMISSION

16 BY: JORGE G. TENRERIRO

17 CLEARY GOTTlieb STEEN & HAMILTON LLP

Attorneys for Defendant Garlinghouse

18 BY: MATTHEW C. SOLOMON

19 PAUL WEISS RIFKIND WHARTON & GARRISON LLP

Attorneys for Defendant Larsen

20 BY: MARTIN FLUMENBAUM

21 DEBEVOISE & PLIMPTON LLP

Attorneys for Defendant Ripple Labs, Inc.

22 BY: MICHAEL K. KELLOGG

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1 defendants, and let me explain why.

2 First of all, Ripple's fair notice defense is not that  
3 *Howey* is unconstitutionally vague as applied to  
4 cryptocurrencies – that was the argument made in *Zaslavskiy*,  
5 it's not being made here – and the individual defendants are  
6 not raising that argument at all.

7 THE COURT: That's also the argument made before Judge  
8 Hellerstein in the *Kik* case, I believe; is that correct?

9 MR. SOLOMON: That's exactly right, your Honor.  
10 That's exactly right. That decision concerned a different  
11 issue. The defendants in *Kik* wanted discovery into why the SEC  
12 chose to bring that action. That's not what we're looking for  
13 here. What we're looking for is whether the SEC acknowledged  
14 that market participants did not understand that offers and  
15 sales of XRP would be treated as securities either because the  
16 SEC itself wasn't certain or because their communications with  
17 market participants made that clear. So, that's exactly right.  
18 That is one distinguishing feature.

19 Now, in terms of the individual defendant's scienter  
20 argument, the one that you just focused on, the SEC argues, or  
21 tries to argue, that only its external conduct is relevant.  
22 But as I just explained in the context of aiding and abetting,  
23 and particularly the recklessness prong of aiding and abetting,  
24 the internal memos we're seeking are relevant to showing  
25 whether it would have been obvious to anyone – anyone – that

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1 XRP was a security, particularly the SEC. As your Honor has  
2 already noted correctly, the documents we're seeking are highly  
3 probative, we believe, of the scienter element of this  
4 unprecedented aiding and abetting charge the SEC chose to bring  
5 here. By contrast, bringing it back to *Zaslavskiy*, he did not  
6 raise a *mens rea* argument at all in his motion to dismiss the  
7 indictment.

8           There's a few other distinguishing features, your  
9 Honor, because this is a case the SEC cites to frequently, it  
10 is a case that Mr. Tenreiro argued, and he argued it well, but,  
11 again, it's a very different case. That case also involved,  
12 your Honor, an ICO and a fraud, neither of which are present  
13 here. Specifically, the defendant in *Zaslavskiy* had an ICO for  
14 a virtual currency it hadn't even created yet that he claimed  
15 was backed by reinvestments, and these are investments he never  
16 secured. He promised particular returns – 10 to 15 percent, I  
17 believe it was. That promise is what's so glaringly absent in  
18 this case. That's why this is not an ICO case, unlike  
19 *Zaslavskiy*, and it's not a fraud case.

20           And then just thinking about the facts in light of the  
21 three *Howey* prongs, your Honor, because your Honor has found  
22 the internal memoranda and position papers we're seeking to be  
23 relevant on the basis of fair notice, on the basis of *Howey*,  
24 and also on the basis of scienter, I think it's fair to say  
25 when you look at the *Zaslavskiy* case, that criminal case, it's

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1 if one looks at Appendix A, there's drafts, there's a  
2 hodgepodge, there's some documents that suggest they can get  
3 the evidence elsewhere, there's drafts, there's one that  
4 talks -- I think two that talk about XRP maybe. So that was  
5 sort of my response, is that I just don't think it's needed in  
6 this case, but if the Court wants us to do that, we will.

7 THE COURT: Okay, good. Thank you. I do.

8 So let's talk about how to move forward. What I would  
9 like is to have the SEC send to me in camera the documents  
10 logged on Appendix A, and then I'm going to give both parties  
11 an opportunity to submit to me targeted letter briefs on those  
12 documents, and with respect to the SEC, I'm going to allow it  
13 to file certain portions of that letter redacted. I will ask  
14 the SEC to be as limiting as possible so that the defendants  
15 have as much opportunity to respond, but I recognize, again,  
16 that the privilege has not been waived, and I'm not going to  
17 ask the SEC to do that in the context of defending its  
18 position. So what I'd like is the documents and a letter brief  
19 from the SEC filed on the public record with redactions, as  
20 limited as possible, and made available fully to me, and then  
21 I'll give the defendants an opportunity to respond -- I don't  
22 think I need a reply brief here -- and then I'll be able to  
23 issue a ruling with respect to these privileged documents and  
24 give the parties some guidance. And if I conclude that certain  
25 documents should be produced, it will give some guidance for

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1 the SEC to review other assertions and see if there are other  
2 documents that should be produced, and if I conclude that the  
3 SEC has properly asserted the privilege, that means that  
4 similar documents of that category also don't need to be  
5 produced.

6 So let's set a schedule for that. Today is the  
7 Tuesday before Labor Day weekend. Mr. Tenreiro, when would you  
8 like to file your letter brief? And I'd like it to be, let's  
9 say, about 10 pages, I think, seems like a reasonable --  
10 10 single-spaced or 20 double-spaced pages to address these  
11 specific documents.

12 MR. TENREIRO: Your Honor, may we have two weeks?

13 THE COURT: Sure.

14 So that will get you to September 14th.

15 MR. TENREIRO: Right.

16 THE COURT: Mr. Solomon, I will have you speak on  
17 behalf of your team. When do you want to file any opposition  
18 letter?

19 MR. SOLOMON: Your Honor, if we could take two weeks  
20 after that, and we'll try to get it to you as quickly as we  
21 can, so it may be less than two weeks, but two weeks would be  
22 good.

23 THE COURT: Okay. So that will get you to  
24 September 28.

25 So, on the 14th, I'd like Mr. Tenreiro not only to